Journal of Accountancy

Volume 56 | Issue 2 Article 5

8-1933

Legal Notes

Harold Dudley Greeley

Legal Notes

HAROLD DUDLEY GREELEY, *Editor*

APPARENT AUTHORITY OF CORPORATE PRESIDENT

A question in the law of agency which always is of practical interest to accountants was raised in a recent municipal court case in Ramsey County, Minnesota. (*Temple Brissman & Co.* v. *Greater St. Paul Corporation*, not yet reported.) The court on appeal held that the evidence in the case justified the jury in finding that the president of the defendant corporation had been clothed with apparent authority to bind the corporation in a contract for an audit of its books.

The sole function of the corporation was the collection of rents from a single parcel of property, part of which was rented by the corporation's president in conducting a drug business. The corporation's treasurer recorded all financial transactions of the corporation in books of account used in another and separate business carried on by the treasurer. In 1926 and once again a few years later the president ordered an audit and both of these audits were paid for by the corporation. In neither instance was formal action taken by the corporation through its board of directors or otherwise. In 1929 the president demanded a third audit but the treasurer refused to pay for it. Nevertheless, the president in behalf of the corporation engaged plaintiff to make this third audit and the plaintiff did make it. Upon refusal by the corporation to pay plaintiff's bill, plaintiff sued the corporation and the president individually. It was conceded that plaintiff's charge was reasonable and the only question was whether the corporation or the president individually should pay for the audit. The corporation contended that the president had no authority to enter into such a contract on its behalf.

The court on appeal held that the president had authority to bind the corporation. The opinion of the court cited *Traxler* v. *Minneapolis Cedar Lumber Co.*, 128 Minn. 295, 150 N. W. 914 which held that the president of a corporation had implied authority to retain an attorney to defend the corporation, and then stated, "We can see little difference between the contract in that case and the one at bar. In both instances the president was acting to protect the corporation." But, the court continued, even assuming that the engaging of plaintiff was beyond the president's authority, the fact that the corporation had paid for two previous audits was sufficient to bind the corporation to pay for this third one. The powers of a president are not well defined but depend largely upon the practice of the particular corporation. The court distinguished the decision in *Grant* v. *Duluth Ry.*, 66 Minn. 349, 69 N. W. 23. That case held that the president of a railroad had no authority to bind it by an agreement that it would pay any loss sustained by a third person upon a contract previously made by that person and the railroad. There the corporation had never clothed the president with any apparent authority to make such a contract. There could be no presumed acquiescence by the directors for the president or any other officer to exercise such power.

STATE INCOME TAX RETURNS AS EVIDENCE IN BANKRUPTCY

Now that congress has decided that our economic recovery depends in part upon making federal income tax returns public records open to public examination and inspection to such an extent as shall be authorized in rules and regulations promulgated by the president (National Industrial Recovery Act, section 218 h), it is a comfort to find that our state income tax returns can not be obtained by trustees in bankruptcy, at least in the eastern district of New York (*In the matter of Hines* U. S. District Court, E. D. N. Y., June 7, 1933, 89 *N. Y. Law Journal* 3539, June 13, 1933). In this case a referee in bankruptcy had ordered the bankrupt to give to the trustee an order directed to the New York tax commission requiring it to deliver to the trustee certified copies of state income tax returns filed by the bankrupt. The tax commission previously had refused to give copies to the trustee. The New York statute provides that returns shall not be disclosed, except in certain circumstances not relevant in this case, but that certified copies may be delivered to "a taxpayer or his duly authorized representative." The federal court held that a trustee in bankruptcy was not a duly authorized representative of the bankrupt and reversed the order of the referee.

The purpose of the secrecy provision in the New York statute was to encourage frank and truthful income tax returns and to lessen the natural unpopularity of the tax. The provision permitting the taxpayer or his representative to procure copies was intended solely for the benefit of the taxpayer or a representative designated by him personally or a representative designated by law to act for him and for his benefit or for the benefit of his estate. The policy of the New York tax commission has been to recognize a trustee in bankruptcy not as a representative of the taxpayer but as a representative of the creditors and hostile to the bankrupt. The federal court approved of this policy and held that the referee himself could not compel the tax commission to disclose the returns nor could the referee accomplish the same result indirectly by compelling the bankrupt to request the tax commission to disclose them.